IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 908 OF 2003
WITH
CIVIL APPLICATION NO. 1400 OF 2003

Shri Dhondiram Ramchandra Ghorpade ... Appellant

V/s

1. Vitthalrao Ganpatrao Ghadge
(since deceased by His heirs)
Shri Suhas Vitthalrao Ghadge & ors. ... Respondents

Shri A.A. Kumbhakoni for the appellant.

Shri R.V. More for the Respondents.

CORAM: P.V. KAKADE, J.

DATED: 6TH DEC., 2004.

P.C.:

1. This appeal is preferred by the appellant-defendant against the judgment and order passed by the Addl. District Judge, Satara on 22.9.2003 allowing the plaintiff's appeal and setting aside the order passed by the Joint Civil Judge, Jr.Divn., Vaduj, Dist. Satara, dated 30.11.1991, whereby the plaintiff's suit came to be dismissed.

2. I have heard the learned counsel for both parties.

Perused the record made available before me by both sides.

The suit land bearing Gat No. 723 admeasuring 1 hector 9 R situated at Village Mol, Dist. Satara, was originally belonging to the father of plaintiff Nos. 1 & 2. It was Class V Inam land. It was regranted in the name of the father of the plaintiffs. It was a condition at the time of regrant not to transfer the aforesaid land without permission of the Collector. The father of the plaintiffs was in need of money for the marriage of his daughter and, therefore, on 20.5.1970, the father of the plaintiffs executed a Mudat-Kharedi Khatk in favour of the defendant. In pursuance of the said document, it was agreed to redeem the property within a period of ten years. According to the plaintiffs, thetransaction dated 26.5.1970 was a mortgage transaction for Rs.4000/-. The father of the plaintiffs requested the defendant to redeem the property but he refused to redeem the property. The plaintiffs' father died on 13.9.1970 and the present plaintiffs called upon the defendant to redeem the property by notice dated 8.6.1981. The defendant replied to the said notice and denied that it was a mortgage transaction. The plaintiffs further claim that

the defendant in reply asserted that their father executed an agreement of sale on 21.5.1975 in favour of defendant. However, the plaintiffs denied the said execution of agreement by their father. the transaction being illegal, defendant did not get any right under the aforesaid document dated 26.5.1970. Hence the suit came to be filed for redemption and for possession.

The defendent resisted the suit. He admitted that the suit property originally belong to the father of the original plaintiffs. He also admitted that the agricultural land was an Inam Vatan land of Class V and the same was regranted to the father of the plaintiffs. According to the defendant, on 26.5.1970, the father of the plaintiffs executed a Mudat Kharedi Khat for Rs.4000/- but it was agreed to reconvey the proeprty, if the father of the plaintiffs repay the amount of Rs.4000/- within a period of ten years from the date of execution of the document. So according to the defendant, the suit transaction was not mortgaged by conditional sale, but it was a sale with condition of repurchase. The father of the plaintiffs neither paid Rs.4000/- nor asked for reconveyance of the suit property within the stipulated time. Therefore, the plaintiffs' father as well as the present plaintiffs

lost their right to claim any relief.

3. The learned Trial Judge proceeded to adjudicate the dispute on merits and came to the conclusion that the suit transaction was of the nature of sale with condition to repurchase and as such the plaintiffs suit came to be dismissed.

The appeal was carried to the District Court, Satara. The learned Addl. District Judge, Satara, heard the appeal on merits and came to the conclusion that the suit transaction was mortgaged by conditional sale and not the sale with condition to repurchase and, as such, the appeal was allowed and suit came to be decreed thereunder. Hence the present appeal.

4. At the outset, it may be noted that the substantial question sought to be raised to the effect that, whether the suit transaction was mortgage by conditional sale or a sale with condition to re-purchase, is a mixed question of law and fact and it appears to be exhaustively and rightly decided bd by the learned Trial Judge appears that he has taken the view that probate could not be granted because there wasy the lower

appellate Court Judge after taking into account all the relevant evidence on record as well as the reasoning adopted by the Trial Court at the trial stage. Therefore, in my considered view, there is no substantial question of law involved in this appeal as the said mixed question of law and fact appears to be properly adjudicated by the lower Court.

5. Time and again, it is laid down by the Apex Court that it is not within the domain of the High Court to investigate the grounds on which findings were arrived at by the last Court of fact being the first appellate Court. This is especially so when the question involved is regarding interpretation of the document. There is absolutely no reason seen from the record to interfere with the findings recorded by the learned lower appellate Court Judge.

6. Admittedly, the suit property is Inam Class IV land and same belongs to the plaintiff. According to the plaintiff, the suit transaction dated 26.5.1970 vide Exh.48 was mortgaged by conditional sale and not the sale coupled with agreement to re-purchase as contended by the defendant.

If we apply the test contemplated under Sec. 58 (c) of the Transfer of Properties Act to the present suit transaction, there is no doubt whatsoever that the suit transaction was mortgaged by conditional sale. The learned appellate Court Judge has appreciated the entire evidence in proper perspective as can be seen from paragraphs 16, 17 and 18 of his judgment. The record further shows that most crucial circumstance in deciding the dispute, according to the defendant is that, the transaction dated 26.5.1970 was absolute sale with condition to re-purchase, however, had it been so, there was no necessity on the part of the defendant to enter into an agreement to re-purchase the suit property on 21.5.1975 for Rs.20,500/-. No doubt that the plaintiffs have denied tha agreement, but the fact remains that the defendant himself tried to establish that that there was novation after the previous transaction and agreed to purchase the property for Rs.20,500/-. The defendant has not established any necessity to enter into an agreement by paying a substantial amount of Rs.10,500/- on the day of Isar (earnest money) when the property was already purchased by him under the suit document dated 26.5.1970.

7. In view of this position, I have no doubt whatsoever

that no substantial question of law is involved in this appeal and the learned lower appellate Court Judge rightly appreciated the entire evidence in proper perspective.

Therefore, the appeal deserves to be dismissed and stands dismissed in limine with no order as to costs.

Consequently, the civil application also stands dismissed with no order as to costs.

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